NORTH CENTRAL REGIONAL TRANSIT DISTRICT (NCRTD)
FINANCE SUBCOMMITTEE

July 26, 2013
9:00 a.m. - 11:00 a.m.

Executive Conference Room
1327 N. Riverside Drive
Espanola, NM 87532

AGENDA

CALL TO ORDER: Tim Vigil, Chair

Roll Call:

ITEMS FOR DISCUSSION/RECOMMENDATION

A. **Discussion of Social Security Coverage and Elections**
Sponsor: Anthony Mortillaro, NCRTD Executive Director and Glenda Aragon, Finance Manager.
Attachment.

B. **Revision to Rule 3: Compensation and Classification Section of the Personnel Policies and Procedures**
Sponsor: Anthony Mortillaro, NCRTD Executive Director and Glenda Aragon, Finance Manager.
Attachment.

C. **Discussion Regarding Public Employees Retirement Association (PERA) Changes and Employer/Employee Contributions**
Sponsor: Anthony Mortillaro, NCRTD Executive Director and Glenda Aragon, Finance Manager.
Attachment.

D. **Discussion of Budget Amendment for Federal Funds Carry-Over**
Sponsor: Anthony Mortillaro, NCRTD Executive Director and Glenda Aragon, Finance Manager.
Attachment.

E. **NMDOT Inspector General Compliance Audit**
Sponsor: Anthony Mortillaro, NCRTD Executive Director and Glenda Aragon, Finance Manager.
Attachment.

MATTERS FROM THE SUBCOMMITTEE

ADJOURN

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language Interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing of the meeting, please contact the NCRTD Executive Assistant at 505-629-4702 at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

Memorandum

To: Finance Subcommittee

From: Anthony J. Mortillaro, Executive Director

Thru:

CC:

Date: June 17, 2013

Re: REVIEW AND DISCUSSION OF NEW MEXICO STATE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION (PERA) SOCIAL SECURITY (SS) PARTICPATION AND ELECTION CHOICES

Background:

On July 12, 2013 the Finance Subcommittee and the Board were informed that the District has been erroneously participating in and taking deductions for SS from employees as well as making a matching contribution. This issue came to light as a result of staff inquiring of the IRS for a tax exempt status letter. According to PERA and the Social Security Administration, a public employer which participates in a qualified retirement plan may only provide Social Security coverage to its employees through a modification to the State's Section 218 Agreement with the federal government. PERA constitutes a qualified retirement plan. Since the district is affiliated with PERA but not covered by any 218 modification agreement, the District should not withhold SS taxes unless it wishes to enter into a Section 218 Agreement and obtain SS benefits. We have been advised by the IRS and PERA to not discontinue withholding SS taxes until the situation has been resolved in accordance with appropriate procedures.

The PERA Legal Counsel, District Legal Counsel, staff and a social security expert consultant have been discussing and reviewing this matter and are recommending to the Board that it undertake a remedial process to correct the situation. This would be the same process that would have been undertaken had the District been aware of the issue when it joined PERA back in April 2005. The process entails the following:

1. First the Board must decide if it wishes to provide SS coverage.
    a. If not, then the Board should determine if it wants to create a supplemental pension plan in lieu of social security?

b. If "yes", the Board must pass a resolution authorizing a referendum of current employees on the question of whether the employees want to be covered by SS.

2. Two types of elections are available: an individual choice election and a majority choice election.

   a. In an **individual choice election**, each current employee gets to decide if he or she wants SS coverage. Those employees who vote yes for coverage will continue to have FICA withheld. Those that do not vote for coverage will no longer have FICA withheld. Those employees who voted "no" are also eligible for a refund of SS contributions for the past three (3) years, three (3) months and fifteen (15) days as is the employer. The employees lose their prior years of coverage for the same time period for social security. However, former employees of the District are not impacted by the choices made in this type of election. After the election, all new hires must be covered by SS.
   b. In a **majority choice election**, a majority of the eligible voters decide whether or not to have SS coverage. If a majority of the employees vote for coverage, all employees have FICA withheld. If a majority vote against coverage, none of the employees are covered by FICA. If the majority of employees choose to not be covered by FICA then the employees are eligible for a refund of SS contributions for the past three (3) years, three (3) months and fifteen (15) days as is the District. The employees lose their prior years of coverage with social security for the same time period as do former employees of the District and future employees will not be eligible for SS coverage.

3. The Social Security Administrator for the State of New Mexico will prepare all the documents once the Board has made a decision. In addition they will oversee the election process as well.

Recommendation:

The Finance Subcommittee should review the Study information regarding the process and choices available to the Board and provide a recommendation for Board consideration.

The Staff has reviewed the options and recommends the following:

1. That the Board choose to participate in SS.
2. That the Board authorize an election for individual choice. Staff's rationale for individual choice is as follows:

a. It allows each employee to make an informed decision regarding participation in SS based upon their best interest in respect to this stage of their career.
b. It prevents the majority from imposing its decision on the minority.
c. It avoids hard feelings amongst employees who did not want to participate in SS.
d. The incentive to make a decision based upon the three year, three (3) months and fifteen (15) days refund and reduced contribution level (6.2% increase in take home pay) is very appealing and motivating for those interested only in short term gains but may not be in the long term interest of an employee.
e. It mitigates the impacts upon prior employees whom would not have a vote in the decision to not participate in SS and secures past employees contributions and credits toward SS.

3. That the District make available an expert in SS to inform employees of their options and impact of their decision based upon their different benefits and liabilities.

4. That the Board consider whether it will keep benefit levels equal for all employees regardless of the decision employees make regarding participating or not participating in SS.

5. If the Board does discern that employees should have the same level of benefits provided regardless of their individual choice decision, then it is recommended that the Board consider authorizing the staff to proceed with the development of a supplemental pension plan [Public Sector 401 (a)] in lieu of SS for those employees who choose to opt out of SS in order to equalize the benefits provided to employees. The additional plan would have no added cost to the District (other than the initial plan set up costs) and would conceptually be constructed as follows:

a. District contribution of 6.2% (equal to SS contribution).
b. Employee mandatory contribution of 1% - 6.2% (needs to be determined).
c. District's refund of SS contributions from last three (3) years, three (3) months and fifteen (15) days for employees not participating in SS would be placed into this plan for those employees.
d. That vesting be set a 20% a year. Fully vested in five years. That employees be given vesting credit based upon their tenure with the District, but not exceeding 3 years, 3 months and 15 days.

e. Other program operating requirements will need to be developed with the assistance of a pension plan expert.
f. The plan be administer by a Pension Plan Administrator.

Attachments:

Sample Individual Choice Referendum Process

Districts

Process for Individual Choice Referendum

Note: No District can begin the referendum process without first having submitted the district's governing documents and the Social Security Reporting Questionnaire to the State Social Security Administrator. The administrator will review the district's documents and notify the district when it has been approved to hold a referendum.

Under an individual choice referendum, each employee who is covered by the Public Employees Retirement Association (PERA) on the date the notice of referendum is given, and who continues in that status through the date of the referendum, is eligible to vote in the referendum.

Once the election is concluded, members of its retirement system are divided into two groups for Social Security coverage purposes – those employees wanting to continue with Social Security coverage and those who opt out of coverage. The conditions for holding a referendum are as follows:

- Voting is conducted on a written ballot.
- Opportunity to vote must be given and limited to those eligible employees who are members of PERA.
- Voting is supervised by the Governor of New Mexico or his designee. The Governor has designated the Public Employees Retirement Association of New Mexico (PERA) and the State Social Security Administrator, Mary M. Frederick, as her designee to conduct the referendums.
- An exact tabulation of the employees eligible to vote must be made and the results must be certified for the referendum.

To begin the process, a referendum committee is appointed. Most referendum committees are composed of two or three members. The committee will serve as the local representative of PERA. The committee's responsibility is to see that the referendum is conducted according to the above conditions to ensure every eligible employee has the opportunity to vote on a written ballot and to certify the results.

The committee then determines the election date for the individual choice election. The election date is determined by when notice of the election will be given. No less than 90 days notice must be given before the election date.

The following steps need to be taken:

STEP 1:
The governing body passes a **Resolution Regarding Social Security Coverage** authorizing an election on the question of Social Security coverage. If the District also needs an original resolution for the district's files, have the governing body execute two original resolutions.

STEP 2:
Appoint a referendum election committee and have committee members sign the **Notice of Appointment**.

STEP 3:
Prepare a **Social Security Coverage Referendum Roster** of employees who are eligible to vote in the referendum. Eligible employees are employees who are covered by the Public Employees Retirement Association on the date the notice of referendum is given, and who continue in that status through the date of the referendum. Include names and Social Security numbers of all of the eligible voters.

STEP 4:
Prepare and issue a **Notice of Referendum** and distribute the notice at least 90 days before the election date. It is important that every employee receive adequate and timely notice. The notice can be mailed, e-mailed, hand delivered or given to eligible voters in any way that can be reasonably calculated to provide the election information.

Allow at least a week before the election date for early or absentee voting.

IMPORTANT! At this point, mail the original **Resolution Regarding Social Security Coverage** and copies of the **Notice of Appointment, Social Security Coverage Referendum Roster and Notice of Referendum** to Mary M. Frederick, Social Security Administrator, P.O. Box 2123, Santa Fe, NM 87504-2123.

To ensure that original documents are not lost in the mail, please send the documents by certified mail or some other method where the documents can be tracked.

STEP 5:
During the 90-day notice period, the District's Executive Director should contact Ray Vigil, Social Security Administration Public Affairs / Wage Reporting Specialist, to provide eligible employees with information about Social Security coverage. Mr. Vigil can be contacted at 1-866-563-9310, ext. 27404 (office) or by e-mail at Ray.Vigil@ssa.gov.

STEP 6:
Prepare a ballot for each employee. The election made by each eligible member will be indicated as follows:

1. **YES** - member **desires to be covered** under Social Security.

2. **NO** - member **desires not to be covered** under Social Security OR member did **not execute and return** the referendum ballot. (Member will **not** be covered for Social Security.)

Absentee ballots should be collected and kept in a secure location to be counted on the day of the election.

STEP 7:
On the day of the referendum, the committee will issue ballots to all eligible voters, record the vote of each person, and certify the results of the election. At least one member of the election committee must be present at the voting site for the hours that have been scheduled for voting.

STEP 8:
The election then committee prepares a **Certification** verifying the election vote.

Prepare a **Certification Tally** of each employee voting "for" Social Security coverage (Group A) and each employee voting "against" Social Security coverage (Group B). The **Certification Tally** is Attachment A to the **Certification**. Send copies of the ballots along with the certification. The original ballots should be filed and maintained by you as the employer.

IMPORTANT! Send the original election C**ertification, Certification Tally** and copies of the ballots to Mary M. Frederick, Social Security Administrator, at PO Box 2123, Santa Fe, NM 87504-2123.

STEP 9:
Notify the SSA of any eligible voters who did not cast a ballot in the election. If an eligible voter does not cast a ballot, their vote is considered a "no" vote for coverage. The SSA will contact employees who did not vote to ensure that they are aware of the consequences of a no vote and termination of Social Security coverage. Note: All employees hired after the election date MUST have Social Security coverage.

218 Agreement Modification - The Social Security Administrator will then prepare a Modification to the State's 218 Agreement representing the results of the District's election. The Agreement will divide the retirement fund into two parts – those voting for and those voting against continued Social Security coverage.

The Modification is then submitted to the Regional Commissioner of the Social Security Administration for approval. An original is submitted for the District as well so the entity has a signed copy of the Modification for its records when the documents are finalized.

No Social Security contributions can be refunded to those employees who voted "no" on coverage until the fully executed Modification is signed by the regional commissioner

and returned to the Social Security Administrator. At that time, a signed copy of the Modification will be sent to the District and the Internal Revenue Service can be contacted to begin the refund process.

Questions? Please contact the Social Security Administrator if you need any additional information:

Mary M. Frederick
Social Security Administrator
for the State of New Mexico
PO Box 2123
Santa Fe, NM 87504-2 123
(505) 476-9303 direct line / (505) 954-0379 fax
mary.frederick@state.nm.us

Memorandum

To: Finance Subcommittee

From: Anthony J. Mortillaro, Executive Director

Thru:

CC:

Date: June 17, 2013

Re: REVIEW AND DISCUSSION OF AMENDMENTS TO PERSONNEL RULES AND REGULATIONS RULE 3 - COMPENSATION AND CLASSIFICATION

Background:

The completed Compensation and Classification Study was presented to the Finance Subcommittee and the Board on July 12, 2013. The Study contained a model compensation policy. The contents of that document have been incorporated into the District's existing Rule 3 "Compensation and Classification" which will address and clarify matters related to the District's compensation practices.

Recommendation:

It is recommended that the Finance Subcommittee review the proposed changes and provide an endorsement for Board consideration.

Attachments:

Rule 3 redline draft.

RULE 3 – CLASSIFICATION AND COMPENSATION

3.1 Authority.

Compensation and Classification may be the subjects of separate District policies which may be changed from time to time independent of these Rules and Regulations.

3.2 Preparation of Classification System.

The Executive Director or designee shall prepare and maintain a Classification System which provides for a grouping of all positions in the District into classifications on the basis of essential duties, responsibilities, and minimum qualifications required. ~~Compensation and Classification may be the subjects of a separate District policy which may be changed from time to time independent of these Rules and Regulations.~~

3.3 Content of Classification System.

A. The Classification System shall include the descriptions for the various classifications, which may be subdivided or grouped as deemed appropriate.

B. Written descriptions for each classification shall be prepared by the Human Resources Office, and approved and amended as necessary by approval of the Executive Director. These descriptions shall include:

1. The title of the classification;

2. Examples of typical essential tasks performed, responsibilities, and working conditions;

3. A statement of the minimum qualifications required, including the kind and amount of training and experience, knowledge, skills, and abilities, physical requirements, and job-related personal attributes that an employee should possess; and

4. Signature by the Executive Director and the date of the last revision.

3.4 Revisions to the Classifications.

A. Whenever the creation, abolition, subdivision, or consolidation of individual classifications appears necessary, due to the creation of a new position, change in organization, or change in the duties of an individual position, a classification may be revised and the revision must be submitted to the Executive Director for approval.

B. Any revisions that may reflect a major change in policy should be submitted to the affected Managers, Supervisors and interested parties in order to obtain input concerning such revisions.

C. When a classification is revised, the title of classification and in some cases the salary range assignment may be affected. The salary of the individual employee in the revised classification may not be reduced or increased without the approval of the Executive Director.

D. When there are revisions to the classification system as a whole the revisions shall be submitted to the District Board for approval.

3.5 Allocation of Positions to Classifications.

A. Every position in the District shall be allocated to a salary range; all positions substantially similar as to the tasks performed, as to the responsibilities exercised, and as to the minimum qualification requirements shown in the classification descriptions, shall be allocated to that same salary range.

B. The title of a classification shall become the title of such position and shall be used on all official records and correspondence relating to the position.

C. Department Management may recommend the allocation or reclassification of positions to one of the classifications in the Classification System or a new classification, subject to approval by the Executive Director.

D. Department Management shall submit adequate documentation to support the recommended reclassification of a position to a different classification.

E. Periodic audits to determine whether or not positions are properly allocated shall be conducted. If it is determined that a position is improperly allocated, the Executive Director shall reallocate it to its proper classification.

F. When a new position is contemplated, the position must be formally established before it may be filled. Except as otherwise provided by these Rules, no person shall be appointed to or employed in a position until the position has been allocated to a classification and approved by the Executive Director.

3.6 ~~3.6~~ Compensation Policy.

Compensation for District employees shall be equitable and competitive with the market and in accord with the District's ability to pay.

It is the policy of the District that the comprehensive Compensation Plan, ~~(Pay Schedule),~~ for all classifications of the District is subject to and limited to availability of funding as may be determined by the Board. The Board shall be the final arbiter of available funds.

3.~~7~~7 General Wage/Salary Adjustments.

It is the intent of the District to consider prevailing practices related to cost of living and market trends in establishing wages and salaries which constitute the formal pay schedule. On all occasions the amount of the rate changes will ultimately be based upon the anticipated affect(s) upon the District budget. The Executive Director, based upon Board of Director's approval, will make final determination of any changes to the salary scale. Where general, across-the-board adjustments are approved, the change will be effective on a date determined and approved by the Board of Directors. General adjustments are separate and distinct from performance recognition increases. General adjustments may affect the pay scale only, thus shifting the pay of all employees in relation to the midpoint. All employees maybe eligible for General Wage/Salary Adjustments unless such employees are represented by a Union and such adjustments if any are governed by a Collective Bargaining Agreement.

3.8 Cost-of-Living vs. Market.

Adjustments to the salary schedule may be determined periodically through analysis of market trends in comparison to cost-of-living (COL). This may be done once per year and the District may utilize either market survey results or cost-of-living index data (federal) or a combination of both. All employees, regardless of employment status, except those being red circled (frozen), shall receive the benefits of such general COL adjustments to the pay plan unless such employees are represented by a Union and such adjustments if any are governed by a Collective Bargaining Agreement.

In determining the total compensation value of the position, benefits must be considered. Base salary plus cost of benefits constitutes total compensation. In comparing benefit packages provided in the labor market, the District may evaluate both level and cost of benefits or other factors as deemed appropriate.

3.9 Preparation of the Compensation Plan—Salary Ranges.

A comprehensive Compensation Plan for all classifications in the District shall be prepared under the direction of the Executive ~~Director.~~Director. The Compensation Plan shall take into consideration experience in recruiting for positions for the District, prevailing rates of pay in comparison to similar services in public and private employment (to the extent that such data is available), cost of living, and other benefits received by District employees, and the District's financial condition and ability to pay.

3.10~~8~~ Adoption of the Compensation Plan.

The Compensation Plan (whether a part of a Compensation and Classification policy or otherwise) shall be adopted by resolution of the Board.

3.11~~9~~ 1Revision to the Compensation Plan.

The Compensation Plan may be revised upon the recommendation of the Executive Director and the approval of the Board.

3.12~~0~~ Administration of the Compensation Plan.

The approved Compensation Plan shall constitute the official schedule of salaries for all classifications in the District to which such Compensation Plan is applicable. The rates of pay for all persons in the District shall be approved by the Executive Director and no salaries shall be approved unless they conform to the approved Compensation Plan.

No employee in the District shall be paid a salary less than the minimum nor greater than the maximum of the salary range for the classification as fixed by the Compensation Plan unless otherwise provided for in the Rules or approved by the Executive Director.

The entrance rate payable to any employee upon appointment to a position in the District shall be the minimum rate in any applicable salary range, unless a higher rate, in-grade hire, is authorized by the Executive Director because of the candidate's exceptional qualifications, difficulty in recruitment, or other valid reason.

Progression within the salary range shall be based upon the approval of the Executive Director. In approving recommendations for pay progression, the Executive Director shall consider compliance with District policies and procedures, performance, level of competence and job knowledge.

3.13 Salary Adjustments and Promotion.

~~**A.** When a promotion occurs, the appropriate pay rate upon promotion is determined in accordance with the classification level of the new classification.~~

A. Promotions within the same classification level will result in a base pay rate increase to the minimum pay step of the new range, or up to a 5% increase if the employee's current pay rate exceeds the minimum of the new classification. The maximum pay range shall not be exceeded; the balance of the award must be taken in cash if the full amount exceeds the maximum pay range.

~~B.~~ Promotions from any lower level classification to any higher level classification will result in a base pay rate increase to the minimum pay step of the new range, or up to a 10% increase if the employee's current pay rate exceeds the minimum of the new classification. The maximum pay range shall not be exceeded; the balance of the award must be taken in cash if the full amount exceeds the maximum pay range.

B.

C. A higher or lower base pay rate may be authorized upon promotion by the Executive Director because of salary compaction; experience and qualifications; correction of salary inequities; or other valid reasons.

~~**A.**~~ The salary of an employee who is laterally transferred to a comparable position shall remain the same unless the Executive Director finds cause for a salary increase due to any change in employment conditions.

D.

~~**B.**~~ The salary of an employee who is re-employed after being called to military active duty in accordance with the provisions of Rule 4.21 shall be at a rate equal to what the employee would have attained had the employee not been called to active duty.

E.

~~**C.** Market adjustments may be awarded upon a market adjustment formula if approved by the Board.~~

~~C.~~

3.14 Salary Decreases.

A. When it becomes necessary to demote an employee for their inability or unwillingness to perform the assigned duties and essential functions of their position; that employee may also suffer a loss of pay. The amount of the pay reduction shall be determined on a case-by-case basis, but never below the newly assigned salary range.

B. An employee may, as the result of reorganization or when deemed in the best interest by his or her supervisor, receive a reduction from their current classification to a lower classification with no reduction in salary.

~~**A.** The salary of an employee who is demoted for disciplinary reasons shall be reduced by at least two steps in the event that the then current compensation plan provides for steps, but never below the newly assigned salary range.~~

~~**C.**~~ The salary of an employee who voluntarily takes a classification reduction will be reduced ~~by at least two steps in the event that the then current compensation plan provides for steps,~~ but never below the newly assigned salary range.

C.

~~**4.**~~**D.** Salaries of all employees may be decreased uniformly and equitably for budgetary reasons upon the recommendation of the Executive Director and approval of the Board.

~~5.~~**1.** Affected employees shall be given at least twenty-eight (28) days' notice.

~~6.~~**2.** In no case shall a salary be reduced below the minimum rate in the salary range.

~~7.~~**3.** Salary decreases may be made to classes of employees, when deemed necessary, in the following order:

~~1.~~a) Emergency.

~~2.~~b) Temporary.

~~3.~~c) Limited Term.

~~4.~~d) Probationary.

~~5. Limited Term.~~

~~7.~~e) Exempt.

~~8.~~f) Classified Regular.

~~The salary of an employee who is laterally transferred to a comparable position shall remain the same unless the Executive Director finds cause for a salary increase due to any change in employment conditions.~~

~~The salary of an employee who is re-employed after being called to military active duty in accordance with the provisions of Rule 4.21 shall be at a rate equal to what the employee would have attained had the employee not been called to active duty.~~

~~Market adjustments may be awarded upon a market adjustment formula if approved by the Board.~~

3.1~~1~~5 Performance Based Increases.

A. Performance increases shall not be granted on an automatic basis but shall be granted upon the demonstrated quality of performance ~~as promulgated by the Board~~ and based on the availability of funding.

~~**B.**~~ Exempt, classified regular, and limited term employees who are considered to be deserving as evidenced by average or above job performance, may be granted a performance increase based on a formula as approved by the Board ~~,~~ (except for those employees whose compensation is subject to and governed by a Collective Bargaining Agreement) and as may be determined periodically within the limits of the salary range after one (1) year from the date of:

i. Rehire or re-employment
ii. Initial employment
iii. The last performance increase; or
iv. Promotion.

~~C.~~**B.** Any period of leave without pay in excess of thirty (30) days shall not be credited as continuous service toward eligibility for a performance increase.

~~D.~~**C.** Service in emergency or limited term, or temporary status, when followed without a break in service by probationary appointment to the same classification, will be credited toward eligibility for a performance increase.

~~E.~~**D.** The Executive Director may authorize a salary increase to any rate in the salary range as an incentive for the emergency retention of exempt, classified regular and limited term employees who are offered employment outside of the District to retain them in their current positions. The following will be required:

1. Documented proof of outside job offer.

2. Increase, computed as a percent of the employee‘s salary, may be granted as a lump sum at the end of a service period, in installments over the course of service period but never to be provided in advance.

3. Before receiving an emergency retention, an employee must sign a written agreement to complete a specified period of service with the District.

~~When an employee’s salary reaches the maximum pay rate in the range for his/her position, the employee may be eligible for a cost of living adjustment based on a performance review by the Executive Director and determined and funded by the Board.~~

~~The Board may, upon appropriate notification of economic changes, approve a cost of living adjustment for some or all employees.~~

~~3.13 Classification Reduction.~~

~~An employee may, as the result of reorganization or when deemed in the best interest of his or her supervisor, receive a reduction from their current classification to a lower classification with no reduction in salary.~~

3.16~~4~~ Red Circle Rate.

This provision refers to the rate of pay for an employee whose pay falls above the current maximum salary for the pay grade to which assigned, reclassified or transferred. Such employee(s) shall be placed on a salary freeze for a period not to exceed two (2) years and shall not be eligible for any general adjustment (COLA) given during the same period of time. However, the employee may be eligible for a performance increase based on a performance review which will be treated as a one-time award distribution and not added to the employee's base pay.

During the two-year salary freeze period, if the employee's rate of pay falls back within the assigned pay range, the freeze shall be lifted. If at the end of two years, the employee's pay rate still falls above the maximum of the pay range, that employee's pay rate shall be reduced to the maximum of the assigned position.

3.17 Overtime Compensation.

In order to meet the demands of work, employees may be required to work in excess of the hours designated in their normal work week. Overtime compensation will be paid to employee, as indicated below, only for actual hours worked. Overtime will be held to a minimum consistent with the needs of the District and service to its constituents. Overtime is normally allowed by management only in emergency situations or when service demands present no other reasonable alternative. However, when a supervisor has determined the need for overtime to be worked, employees are expected to work a proportional share of the overtime assigned to the employee's classification or work unit. Refusal to accept an overtime assignment and/or continued refusal to participate in voluntary overtime offered to the employee's classification may result in disciplinary action. All overtime must be scheduled and/or approved by the employee's supervisor in advance, except in emergency situations where advance approval cannot be obtained.

A. Any employee, (except those determined not to be covered by the overtime provision of the FLSA), who are authorized and approved in advance by their supervisor and required to work in excess of the normal work week (forty [40] hours), shall be compensated for such overtime at one and one-half (1 1/2) times their hourly rate or unless otherwise specified in the Fair Labor Standards Act (FLSA). Such compensation shall be paid overtime unless the employee elects to receive compensatory time in lieu of paid overtime. Such compensatory time shall be accrued at time and one-half.

B. The following hours are considered as hours worked for the purpose of qualifying for overtime pay at the rate of time and one-half.

1. Hours actually worked;
2. Paid holidays;
3. Hours allowed for voting time;
4. Jury duty;
5. Hours allowed for court duty when appearing as a witness on behalf of the District or because of an official capacity with the District; and
6. Training time.

C. The following are considered hours not worked and will not be counted toward overtime/comp-time eligibility. Excepting only the provisions of B. above, an employee must be physically at

work more than forty (40) hours per week and cannot use the following time to obtain overtime/comp-time eligibility:

1. Vacation;
2. Sick leave;
3. Military leave;
4. Funeral leave;
5. Injury leave;
6. Lunch break;
7. Comp-time hours used.

D. Travel time may or may not be work time.

1. Travel from home to work and from work to home is not work time. Time spent by an employee in travel as part of his/her normal activities, such as travel from job site to job site during the employee's regular working hours, or operation of a transit vehicle for public transit, is work time and must be recorded.

2. Travel performed outside of an employee's normal work schedule as a result of assigned duties may constitute work time. The Human Resources Office must be consulted in advance to determine whether or not such travel time is work time.

E. In some cases, compensatory time may be granted in lieu of cash payment. FLSA covered employees may accrue and use up to forty (40) hours of compensatory time annually. In the last pay period of the fiscal year, all accrued but unused compensatory time shall be paid to the employee at the employee's then current regular rate of pay.

F. An FLSA covered employee who separates from the District shall be compensated for all accrued compensatory time.

G. Exempt employees (non-FLSA covered) who work in excess of the normal work week (forty [40] hours), are not eligible for overtime pay. The basic compensation of exempt employees is based on the amount of work necessary to complete the assigned functions and is not based upon a set number of hours per work week. Time worked in excess of forty (40) hours per week is not eligible for compensation during the course of employment or upon termination. However, at the discretion of the Executive Director, exempt employees may be granted time off during normal work hours in consideration of their work efforts.

~~G.~~

3.18 Termination Pay.

When employees terminate, they shall be required to return all equipment and to clear all financial obligations involving their employment with the District prior to receiving their final paycheck. Any such obligation not cleared may be itemized and deducted from their final paycheck, consistent with IRS guidelines and/or state statute. Final paycheck, including compensation for all uncompensated hours worked, unused annual leave and overtime will be issued on the next regularly scheduled pay period following termination. If the Executive Director receives a written request for final payment, the final payment shall be issued within 24 hours from the date terminated. The Executive Director may submit to finance/payroll the amount of termination pay to which the employee is entitled.

3.19 Pay Advancement.

The District will not make pay advances to employees.

Memorandum

To: Finance Subcommittee

From: Anthony J. Mortillaro, Executive Director

Thru:

CC:

Date: June 17, 2013

Re: Review and Discussion of PERA Survey Data

Background:

The completed Compensation and Classification Study was presented to the Finance Subcommittee and the Board on July 12, 2013. The Study contained a survey and analysis of existing PERA contributions by various public entities. The survey data concluded that the Districts contribution towards the employee's portion of PERA is 4.68% below that of the survey participant's average. A further analysis shows (excluding the School District's whom are in a separate Pension System) that of the 13 City and County survey participants, 10 contribute in excess of what their obligations are according to the PERA plan they participate in, which implies that they are absorbing a portion of the employees obligation. The pick-up amounts range from 4% to 9.86% with an average being 4.86%.

In addition, the Study contained information regarding what if any actions public entities are taking in respect to the PERA increase of 1.5% for employees. As of the date of the survey, two entities had acted to pick up the increase and two were still deliberating what action they might take.

On July 12, 2013 it was suggested that this topic be brought back for further deliberation at the Board's August meeting. In order to comply with that direction, the Finance Subcommittee will need to discuss this at their July 26 meeting.

Recommendation:

It is recommended that the Finance Subcommittee review the Study information regarding PERA and provide a recommendation for Board consideration.

1. Should the difference in existing pension obligation amounts be addressed?

2. Should the newly legislated mandate for 1.5% PERA contribution by the employee be addressed?

Options for item 2 for the Finance Subcommittee to consider are:

- Cost of picking up the July, 2013 increase in PERA contribution by the employee of 1.5% is $23,570 (can likely be absorbed through vacancy savings); or
- For the 1.5% pickup of the employee pension contribution, consider a phase in over FY 14 and FY 15. Budget impact for FY 14 is $11,785 which can be absorbed through vacancy savings. Budget for FY 15 the balance of $11,785; or
- For the 1.5% pickup of the employee pension contribution consider only providing 2.0% for performance based increases and use the balance of 1.5% to pick up the pension contribution in FY 14 at no additional budget cost; or
- Do not consider the 1.5% pickup of the employee pension contribution but reduce it to 1.13% (75% at a cost of $17,677) using probable vacancy savings; or
- Consider other permeations; or
- Do not consider any pick up of the additional pension contribution.

FY 14 Budget Impact:

❖ **Overall Operations budget impact: $23,570 (0.55%)**

*** In 2015 the employer contribution to PERA will increase by 0.5%

Attachments:

Benefits survey

NORTH CENTRAL REGIONALTRANSIT DISTRICT
CORE BENEFITS COMPARISON - EMPLOYER CONTRIBUTION

ENTITY	EMPLOYER % SHARE	Health	Dental	Vision	Life	Plan ID	Employee Obligation	Employee Actual	Employer Obligation	Employer Pick Up	July 1st Pick Up of 1.5%	Other	Employer Contribution	Ltd	SS/Med	Tot $	Tot %
TAOS SCHOOL DISTRICT	60%	$801	$50.54	$8.48	Included	NA	**10.65%**	**10.65%**	**13.15%**	0.00%	None		**13.15%**		7.65%	**$860**	**20.80%**
SANTA FE SCHOOL DISTRICT	60%	$801	$50.54	$8.48	Included	NA	**10.65%**	**10.65%**	**13.15%**	0.00%	None		**13.15%**		7.65%	**$860**	**20.80%**
LOS ALAMOS SCHOOL DISTRICT	60%	$801	$50.54	$8.48	Included	NA	**10.65%**	**10.65%**	**13.15%**	0.00%	None		**13.15%**		7.65%	**$860**	**20.80%**
ESPANOLA SCHOOL DISTRICT	60%	$801	$50.54	$8.48	Included	NA	**10.65%**	**10.65%**	**13.15%**	0.00%	None		**13.15%**		7.65%	**$860**	**20.80%**
ROSWELL SCHOOL DISTRICT	60%	$801	$50.54	$8.48	Included	NA	**10.65%**	**10.65%**	**13.15%**	0.00%	None		**13.15%**		7.65%	**$860**	**20.80%**
FARMINGTON SCHOOL DISTRICT	60%	$801	$50.54	$8.48	Included	NA	**10.65%**	**10.65%**	**13.15%**	0.00%	None		**13.15%**		7.65%	**$860**	**20.80%**
ALBUQUERQUE SCHOOL DISTRICT	60%	$801	$50.54	$8.48	Included	NA	**10.65%**	**10.65%**	**13.15%**	0.00%	None		**13.15%**		7.65%	**$860**	**20.80%**
LAS CRUCES SCHOOL DISTRICT	60%	$801	$50.54	$8.48	Included	NA	**10.65%**	**10.65%**	**13.15%**	0.00%	None		**13.15%**		7.65%	**$860**	**20.80%**
CARLSBAD SCHOOL DISTRICT	60%	$801	$50.54	$8.48	Included	NA	**10.65%**	**10.65%**	**13.15%**	0.00%	None		**13.15%**		7.65%	**$860**	**20.80%**
HOBBS SCHOOL DISTRICT	60%	$801	$50.54	$8.48	Included	NA	**10.65%**	**10.65%**	**13.15%**	0.00%	None		**13.15%**		7.65%	**$860**	**20.80%**
ALBUQUERQUE	80%	$990	$70.00	$13.28	1.4x Salary	3	**14.65%**	**4.79%**	**9.15%**	9.86%	None		**19.01%**		7.65%	**$1,073**	**26.66%**
CARLSBAD	70%	$1,301	Included	Included	Included	3	**14.65%**	**14.65%**	**9.15%**	0.00%	None		**9.15%**	x	7.65%	**$1,301**	**16.80%**
FARMINGTON	80%	$1,077	Included	Included	1.5x Salary	2	**10.65%**	**10.65%**	**9.15%**	0.00%	None		**9.15%**		7.65%	**$1,077**	**16.80%**
HOBBS	75%	$1,388	Included	Included	Included	2	**10.65%**	**6.65%**	**9.15%**	4.00%	None		**13.15%**		7.65%	**$1,388**	**20.80%**
LAS CRUCES	60%	$885	$52.21	NA	$4.20	3	**14.65%**	**8.65%**	**9.15%**	6.00%	None		**15.15%**		7.65%	**$942**	**22.80%**
LOS ALAMOS COUNTY	80%	$1,178	$82.70	$15.79	$4.50	3	**15.65%**	**15.65%**	**9.15%**	0.00%	None	9.00%	**18.15%**	0.25%	1.45%	**$1,281**	**19.85%**
ESPANOLA CITY	80%	$1,023	Included	Included	NA	3	**14.65%**	**7.07%**	**9.15%**	7.58%	None		**16.73%**	$4.20	7.65%	**$1,027**	**24.38%**
RIO ARRIBA COUNTY	65%	$959	$56.33	$8.86	$4.20	4	**17.15%**	**12.15%**	**11.65%**	5.00%	None**		**16.65%**		7.65%	**$1,028**	**24.30%**
ROSWELL	90%	$1,168	$0.00	$0.00	$6.54	2	**10.65%**	**10.65%**	**9.15%**	0.00%	None		**9.15%**		7.65%	**$1,175**	**16.80%**
TAOS	80%	$956	Included	Included	Included	3	**14.65%**	**10.65%**	**9.15%**	4.00%	None		**13.15%**		7.65%	**$956**	**20.80%**
SANTA FE CITY	77%	$1,202	$55.22	NA	Included	3	**14.65%**	**10.65%**	**9.15%**	4.00%	1.13%		**14.28%**		7.65%	**$1,257**	**21.93%**
SANTA FE COUNTY	75%	$695	$55.00	9.43	$2.64	3	**14.65%**	**4.79%**	**9.15%**	9.86%	1.13%		**20.14%**		7.65%	**$762**	**27.79%**
TAOS COUNTY	70%	$683	$40.62	$6.70	$1.66	4A	**17.15%**	**16.03%**	**11.65%**	0.00%	1.13%		**12.78%**		7.65%	**$732**	**20.43%**
AVERAGE	**68%**	**$935**	**$50.97**	**$8.68**	**$3.96**								**13.83%**		**7.38%**	**$1,077**	**21.22%**
NCRDT	**80.00%**	**$1,180**	**$69.61**	**$11.96**	**$3.36**	**2**							**9.15%**		**7.65%**	**$1,265**	**16.80%**
		Health	**Dental**	**Vision**	**Life**								**Ret**	**Ltd**	**SS/Med**	**Tot $**	**Tot %**
DOLLAR DIFFERENCE		**$245**	**$18.64**	**$3.28**	**($0.60)**								**-4.68%**			**$188**	**-4.42%**
PERCENT DIFFERENCE		**20.72%**	**26.78%**	**27.43%**	**-17.77%**											**14.87%**	**-26.33%**

Pension: July 1 PERA contribution by employees will increase by 1.5%. For example, the city of Santa Fe legislated on May 22, 2013 to assume 75% of the 1.5% increase.
Health: July 1 Local entities participating in State health care plans; premiums will increase by 15%. Additionally, another 15% may incurr in December.

** Under consideration

Memorandum

To: Finance Subcommittee

From: Anthony J. Mortillaro, Executive Director and Glenda Aragon, Finance Manager

Date: July 18, 2013

Re: **NMDOT INSPECTOR GENERAL AUDIT REPORT**

Background: In October 2011 the NMDOT Inspector General had informed the District that due to a citizen complaint alleging that the District did not expend its federal pass through funds appropriately, it was undertaking an audit of federal expenditures for FYs 08-11. The Inspector General choose to undertake this audit during a time that the District was catching up on its past audits for FY 08, 09 and 10 and also undergoing a Fiscal Management Oversight review by the Federal Transit Administration. The staff had communicated to the NMDOT Inspector General our concern with duplicity of their audit and the FTA FMO review. The Board was informed by the Executive Director of the audit by NMDOT Inspector General (IG). The audit took approximately 20 months be completed and issued.

The NMDOT IG did not provide a draft audit report to the District. The Manager for the NMDOT Rail and Transit Division had notified the District of the draft report and indicated that he was not able to convey a copy to the District due to restrictions placed upon the report by the NMDOT IG. He did contact the NMDOT IG who agreed to allow the District to view the audit at the NMDOT Offices only. The NMDOT Rail and Transit Division Manager had also received a concurrence to allow the District to draft a response to the audit findings. The District submitted its responses for inclusion in the report, however, we were informed that the NMDOT IG after reviewing the Districts response chose not to include the Districts responses to the audit findings in the final draft. The NMDOT IG never provided a final copy of the report to the District. The District was able to request a copy of the report from NMDOT once it was known that it had been issued to other parties as noted in their correspondence.

Attached are the responses the District had prepared and submitted. As you will discern we disagree with a number of the findings. A number of the findings found deficiencies from FYs 08, 09, and 10 and some of these were already noted by the FTA FMO review. Other past practices and deficiencies were in the process of being corrected by the District's new administration at the time of the audit.

Lastly, the District was selected to participate in an FTA site visit as part of the New Mexico State Management Review in July 2012 which noted "no findings" in the District's practices and the NMDOT Rail and Transit Division's oversight of the District.

Recommendation: NA discussion only

Attachments:

NMDOT IG Correspondence
NCRTD Response

Form No. A-110
Rev. 02/13

New Mexico DEPARTMENT OF TRANSPORTATION

****

Intra-Departmental Correspondence

****

Subject: North Central Regional Transit District (NCRTD) Compliance Audit

Date: June 28, 2013

To: Frank Sharpless, Director
Transit & Rail Division Director

File Reference: 12-12-01

From: Julie Atencio, Deputy Inspector General
Office of Inspector General

In accordance with Commission Policy No. 30, the New Mexico Department of Transportation's (NMDOT) Office of Inspector General has completed an audit of the North Central Regional Transit District (NCRTD). The audit was performed by Lead Auditor, Camille Miller and Assisting Auditor, Liana Velasquez with oversight provided by Audit Supervisor, Yvonne M. Gonzales.

Background

NCRTD was formed in 2004 and started operating service in 2007 for the primary purpose of providing mobility options to individuals in the remote four county areas of North Central New Mexico. The counties of Rio Arriba, Los Alamos, Santa Fe, and Taos are serviced as are the Pueblos of Ohkay Owingeh, Pojoaque, San Ildefonso, Santa Clara, and Tesuque. In addition, the cities of Espanola, Santa Fe, and Edgewood are also serviced and are NCRTD members. These free services operate through 20 fixed and two demand response commuter transit routes.

NCRTD's organizational structure consists of an Executive Director, Executive Assistant, Finance Manager, Service Development/Projects Manager, Transit Projects Manager, Public Information Officer, Fleet/Building Maintenance Manager, Operations Analyst, Financial Analyst, Financial Specialist, Facilities Maintenance Specialist, Two Route Supervisors, Transit Drivers, and a Dispatcher/Driver. Oversight is the responsibility of a Board of Directors comprised of representatives from the populations that NCRTD provides services. The organizations ability to maintain fully staffed levels varies based upon availability of funding.

For Fiscal Year (FY) 2012, two thirds ($7,027,716) 70% of NCRTD operating revenues were derived from Transit Gross Receipts Tax (GRT) collected from four counties, with the remainder of the funding provided by the Federal Transit Administration (FTA) ($2,477,644) and administered by the NMDOT's Transit Division. In addition, approximately 9% of the revenues were received from other sources such as member local matches, advertising, and miscellaneous revenues.

Near the end of FY12, NCRTD consolidated their offices located in Espanola, Santa Fe, and Taos through the purchase and renovation of a 12,500 square foot building located on a 10-acre property in Espanola, made possible through grants received from the American Recovery and Reinvestment Act, the FTA, Congressional Funding, and Transit GRT.

NCRTD currently maintains a fleet of 35 vehicles consisting of three 40-passenger vehicles; three 28-passenger vehicles; one 25-passenger vehicle; five 18-passenger vehicles; fifteen 12-14 passenger vehicles; five 8-passenger vehicles; three 5-passenger vehicles; and a recovery vehicle utilized to provide roadside assistance and towing capabilities for disabled vehicles.

NMDOT administers FTA funds to NCRTD (as sub-recipient) through the utilization of Memorandum of Agreements (MOA) allocated for specific grant programs including but not limited to: Statewide Planning (5304); Capital Investment (5309); Non-Urbanized Formula Program (5311); and Job Access Reverse and Commute Program (5316).

Objectives, Scope and Methodology

The objectives of the audit were to:

- Determine NCRTD's Single Audit Act compliance;
- Ascertain NCRTD's compliance with Drivers Training requirements;
- Ensure NCRTD's compliance with Operator Drug and Alcohol Testing requirements; and
- Verify costs reimbursed to NCRTD are allowable and adequately supported.

The audit included review of the Transit Guide and communications with NMDOT staff representatives from Budget, Contract Management, Finance, Funding Control, Procurement and the Transit Bureau. Reviews were conducted on laws, rules, and regulations applicable to transit operations including but not limited to United States Code (USC), Code of Federal Regulations (CFR), Office of Management & Budget (OMB), FTA Circulars, Government Accountability Office (GAO) Principles of Federal Appropriations (Red Book), and State of New Mexico Statutes and Procurement Codes. The audit scope included seventeen agreements and contracts entered into between NMDOT and NCRTD during FY's 08-11, and 100% of the costs reimbursed to NCRTD during this same time frame. In order to avoid redundant fieldwork activities, we coordinated our fieldwork efforts with FTA management and the independent Certified Public Accountant (CPA) they contracted to conduct a full scope financial management systems review of NCRTD. Field visits were made to NCRTD offices in Espanola, Santa Fe and Taos in order to obtain an understanding of operations and included reviews of documents such as bank statements, bylaws, debit cards statements, employment contracts, personnel policies, procurement policies, professional service contract, and purchase card policies.

Our audit team reviewed OMB Circular A-133 and the MOA's in order to determine Single Audit Act Requirements applicable to NCRTD. We then accessed the Federal Audit Clearinghouse database and examined NCRTD's single audits for FY's 08-11 to assess results and determine timeliness of submittals.

In order to ascertain the organization's compliance with Federal and State Drivers Training Requirements, we compared the training courses completed (certified) for 100% of the drivers employed by NCRTD during FY's 08-11, and compared against the training requirements stipulated within the ADA, FTA Circulars, and the MOA's.

To ensure NCRTD's Compliance with FTA Drug & Alcohol Testing Requirements for Transit Operators, we compared FTA's procedures for transportation workplace drug & alcohol testing programs against NCRTD's drug & alcohol policies in order to determine if deviations exist. We then examined the results of 100% of the drug and alcohol tests performed during FY's 08-12 for 100% of the drivers employed by NCRTD during that same time period. In addition, we verified procedural compliance including dates and testing results including the disposition of positive test results or actions taken as a result of refusal to submit to testing.

We performed random sampling on costs reimbursed to NCRTD during FY's 08-11 in order to determine the level of risk for Unallowable or Unsubstantiated Costs. Areas selected for examination included: Advertising, Capital Outlay, Cell Phones, Contractual Services, Debit Card Charges, Fringe Benefits, Fuel, Labor, Meals, Office Supplies, Rent, Shop Repairs, Tires, and Travel. Our review consisted of determining whether these costs comply with Federal Cost Standards (2 CFR Part 225 & Red Book) including whether there is adequate documentation to support reimbursements such as itemized receipts, including explanations or purpose for expenditures.

Disclosure

During the course of the audit, obstacles were encountered that created barriers towards our ability to effectively achieve the fourth audit objective. As a result, with the exception of payroll costs, we were unable

to determine whether costs reimbursed to NCRTD during FY's 08-11 were allowable and adequately supported. The specific details are noted within Finding No. 1.

Part One - Findings and Recommendations

Finding No. 1 – NCRTD in Non-Compliance with Records Management Requirements

Condition

As noted in the disclosure statement above, our audit team documented the following issues pertaining to NCRTD's management of records:

❖ **Financial Records**

During fieldwork activities, NCRTD was in the process of consolidating and moving all of their offices to the new building in Espanola. Due to this move, some of the requested source documents were already boxed and unavailable. After the move, the audit team traveled to the new office and requested documents and were told that documents were archived in the attic;

In addition, NCRTD had transitioned their accounting software from QuickBooks to MIP Sage resulting in an inconsistent audit trail caused by staff having to compile documents from separate financial systems and files; and,

It was also noted that some of the source documents provided such as receipts, lacked any explanation or purpose for expense creating a lack of audit trail.

❖ **Incorrect Audit Information**

The Auditors requested source documents that pertained only to NMDOT pass-through fund reimbursements. The following outlines the information that was provided:

- Auditors requested debit card ledgers and were given monthly bank statements that were later determined to be representative of expenditures paid with various funding sources that were not inclusive of just NMDOT pass-through funds; and,
- Auditors requested source documents to support travel reimbursements and were provided with "travel folders" that contained mostly cell phone reimbursements and other miscellaneous unrelated information.

❖ **Loss of Audit Liaison**

During the course of the audit, NCRTD's Financial Manager, who also acted as Audit Liaison, left employment resulting in the loss of the key audit contact point. Soon after, it was noted that the NCRTD staff member assigned as Acting Audit Liaison, lacked the technical accounting knowledge required to provide the level of assistance necessary to facilitate audit requests in a timely manner.

❖ **Multiple Ongoing Audits**

At the time of fieldwork, NCRTD was undergoing and/or preparing for other audits in addition to our audit; therefore, creating an additional obstacle in obtaining requested documentation.

Criteria

- 2 CFR Part 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87) Appendix A to part 225-General Principles for Determining Allowable Costs:

2. Policy guides. A. The application of these principles is based on the fundamental premises that: (1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices. (2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

- 49 CFR Part 18-Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments Section 18.40 Monitoring and Reporting Program Performance:

  (a) Monitoring by grantees. Grantees are responsible for managing the day-to-day operations of grant and sub grant supported activities. Grantees must monitor grant and sub grant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

- FTA C 4220.1F Chapter III the Recipient's Responsibilities:

  (3) Third Party Contracting Capacity…d. Record Keeping. The Common Grant Rules require the recipient to prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation; and,

- In accordance with MOA's by and between NMDOT and NCRTD Section on Retention of Records:

  The Sub-grantee shall maintain all books, documents, papers, accounting records, reports and other evidence pertaining to costs incurred on the Program, and shall make all such materials available to the Department, the Federal Transit Administration, the comptroller *General of the United States or their representatives at any reasonable time during the term of this* Agreement and at the Department's offices, and for five (5) years from the date of the last expenditure report.

Effects

- NCRTD in non-compliance with CFR records retention requirements;
- NCRTD in non-compliance with FTA common grant rule record keeping requirements;
- NCRTD in non-compliance with MOA records retention requirements;
- NCRTD in non-compliance with their own records management policies;
- Lack of audit trail; and,
- Transit and Rail Division unable to consistently determine whether reimbursements being made to NCRTD are allowable.

Cause

NCRTD failed to place the importance necessary towards ensuring costs invoiced to NMDOT are supported with adequate receipts including explanations to support specific purpose of expenses.

Recommendation

The Transit and Rail Division require NCRTD to maintain an audit trail and develop a written action plan detailing what records management processes and procedures will be implemented or corrected including timeframes for implementation.

Response

NMDOT Transit and Rail Division – No response to Finding #1 from NMDOT Transit and Rail Division.

Finding No. 2- NCRTD in Non-Compliance with Single Audit Act Requirements

Condition

During the review of the Federal Audit Clearing House Entity Query Reports for FY's 08-11, the following facts were determined:

- Prior to initiation of the annual audit, NCRTD failed to inform the Transit and Rail Division of the firm proposed to conduct the audit; and,
- NCRTD submitted their single audits and data reporting forms beyond the deadline date as detailed below.

Federal Audit Clearinghouse Data		
Fiscal Year End Date	Audit Due Date	Date Audit was Submitted
06/30/2008	12/31/2008	02/11/2010
06/30/2009	12/31/2009	06/01/2011
06/30/2010	12/31/2010	11/07/2011
06/30/2011	12/31/2011	02/17/2012

Criteria

- OMB Circular A-133: 320 Report submission.

  (a) General. The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit.

- Subpart D-Federal Agencies and Pass-Through Entities, 400 Responsibilities.

  (d) Pass-through entity responsibilities.

  (4) Ensure that sub recipients expending $300,000 ($500,000 for fiscal years ending after December 31, 2003) or more in Federal awards during the sub recipient's fiscal year have met the audit requirements of this part for that fiscal year.

- 225 Sanctions.

  In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

  (a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;
  (b) Withholding or disallowing overhead costs;
  (c) Suspending Federal awards until the audit is conducted; or
  (d) Terminating the Federal award.

- In accordance with MOA's by and between NMDOT and NCRTD Section on Audit:

  The Sub-grantee shall ensure that an annual audit of the Program based on the Sub-grantee's fiscal year shall be conducted pursuant to OMB Circular No. A-133.

Prior to initiation of the annual audit, the Sub-grantee shall inform the Department of the firm proposed to conduct the audit. The Department shall have final approval of the proposed audit firm.

Effects

- NCRTD in non-compliance with Federal Single Audit Act Requirements;
- NCRTD in non-compliance with MOA Single Audit Act Requirements;
- Lack of assurance that NCRTD can maintain consistent fiscal accountability; and
- Potential for sanctions being imposed upon NCRTD.

Cause

NCRTD management failed to place the importance necessary to ensure their single audits were completed and submitted in the timely manner required.

Recommendation

Based upon NCRTD's documented history of untimely submittals of their annual single audits, and the number of significant deficiencies (thirteen) and material weaknesses (five) reported by FTA's consultant CPA in March of 2012, it would be prudent for the Transit and Rail Division to ensure NCRTD's compliance with OMB Circular A-133.

Response

NMDOT Transit & Rail Division - Regarding NCRTD failing to inform the Division of the firm proposed to conduct the audit, the Division has reminded NCRTD to inform the NMDOT Transit and Rail Division, of any Third Party Contracts they enter into with FTA funding as per the Memorandum of Agreement.

Finding No. 3- NCRTD in Non-Compliance with Operator Training Requirements

Condition

During our review of NCRTD's employee training files, the following was documented:

- Eleven of the thirty-one drivers (35%) employed by NCRTD during fiscal years 08-11 never took the initial mandatory training upon hire;
- Eleven of the thirty-one drivers (35%) had expired training courses that have not been renewed; and,
- Nine of the thirty-one drivers (29%) had training completion certificates that contained misspelled names and wrong last names.

Training Required for Drivers	Number of Employees who did not complete training	Renew Period	Number of Employees with Expired Training	Time Frame to Complete Training from Date of Hire	Number of Employees who did not Complete Training w/in Time Frame	Total Number of Drivers
Drug and Alcohol Training	4	N/A	N/A	N/A	N/A	31
Vehicle Inspection Procedures	5	N/A	N/A	N/A	N/A	31
Defensive Driving	9	Every 3 years	22	6 Months	16	31
Passenger Safety and Sensitivity	4	Every 3 years	5	6 Months	21	31
Crisis Management	6	Every 3	6	6 Months	19	31

		years				
CPR and First Aid	7	Every 3 Years	9	6 Months	20	31
Blood Bourne Pathogens	29	N/A	N/A	6 Months	31	31
Use of Wheelchairs	24	N/A	N/A	6 Months	24	31

Average of Employees who did not complete training	% of employees who did not complete training	Average of Employees with Expired training	% of Employees with Expired training
11/31	35%	11/31	35%

Criteria

- 49 CFR 37.173 Subtitle A (10-1-11 Edition) Subpart G- Provision of Service Section 37.173 Training Requirements.

  Each public or private entity which operates a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.

- Federal Transit Administration – Americans with Disabilities Act (FTA ADA)-Questions and Answers Concerning Wheelchairs.

  Because safe and nondiscriminatory transportation is the responsibility of the transportation operator, Section 37.173 of the DOT ADA regulations requires operators to train their personnel to properly assist and treat individuals with disabilities with sensitivity, and to operate vehicles and equipment safely. This includes training personnel to use the accessibility equipment and to accommodate the different types of wheelchairs.

- FTA C 5010.1D Chapter II Circular Overview 11/1/2008

  3. Responsibilities of Grant Management. Grantees are responsible for the day-to-day management of their Federal grants and of grant supported activities. FTA monitors grants and federally funded projects to confirm that grantees establish and follow procedures that comply with Federal requirements.

  a. Grantee's Role. A grantee must monitor grant supported activities to ensure compliance with applicable Federal requirements. This includes the administration and management of the grant in compliance with the Federal regulations, Grant Agreement and applicable FTA circulars. A grantee is also responsible for funds that "pass through" to a sub-recipient. .

- In accordance with MOA's by and between NMDOT and NCRTD Section on Training:

  The SUBGRANTEE shall ensure that all drivers of vehicles utilized in the Program described in the Operations Profile shall be trained in first aid, cardiopulmonary resuscitation (CPR), Blood borne Pathogens, defensive driving and use of wheelchairs. Additional training in Passenger Safety and Sensitivity and Crisis Management are required by the DEPARTMENT through its approved contractor. This training shall be completed and trainee(s) certified within six (6) months of the effective date of this AGREEMENT. All drivers hired after the effective date of this AGREEMENT must be trained in first aid, CPR, defensive driving, use of wheelchairs, Passenger Safety and sensitivity, and Crisis Management. This training must be completed and driver(s) certified within six (6) months of their date of hire. Proof of such training shall be required. All full time, part time, substitute/fill-in or volunteer vehicle operators shall

have in their possession valid certifications while operating a public transportation vehicle in service of this program; and,

In addition, the DEPARTMENT may schedule required training for the benefit of the SUBGRANTEE...Should the SUBGRANTEE fail to satisfy the terms and conditions as outlined, the SUBGRANTEE may be found to be in breach of contract and subject to the provisions of Section 23, Termination for Cause.

Effects

- NCRTD in non-compliance with CFR training requirements;
- NCRTD in non-compliance with FTA/ADA training requirements;
- NCRTD in non-compliance with FTA Circular;
- NCRTD in non-compliance with MOA training requirements;
- NCRTD drivers not receiving the required level of training;
- Increase safety risk to NCRTD passengers and the traveling public; and,
- Increased liability exposures for NCRTD, NMDOT, and FTA.

Causes

- NCRTD management failed to place the importance necessary towards ensuring all drivers have received and maintained mandatory training; and,
- NCRTD failed to ensure accurate name information on drivers training certificates.

Recommendations

We recommend the Transit and Rail Division:

- Remind NCRTD of their contractual obligation to ensure all drivers are up to date with mandatory drivers training requirements;
- Remind NCRTD of their fiduciary responsibility to ensure all drivers have received training adequate to maintain safety of the traveling public; and,
- Conduct unannounced site visits to ensure NCRTD drivers are up to date with mandatory training until such a time when instances of non-compliance are insignificant.

Response

NMDOT Transit & Rail Division - NCRTD received a Drug and Alcohol Testing site visit from NMDOT in on August 2, 2012, and a Technical Assistance Site Review on August 22, 2012, as well as a site visit from FTA as part of NMDOT's State Management Review on August 1, 2012. Training records were reviewed and found to be compliant in all cases. The Section 5311 Technical Assistance and Review Questionnaire and correspondence as well as other site review documents are available for further review.

Finding No. 4 – Late Monthly Invoices

Condition

During our review of NCRTD's monthly reimbursement reports for FY's 08-11, we found that 88 out of 110 (80%) invoices were not submitted to the Transit and Rail Division by the 25th of the following month as required by the MOA's.

Criteria

- In accordance with MOA's by and between NMDOT and NCRTD:

  "The DEPARTMENT shall reimburse the SUBGRANTEE for the DEPARTMENT share of the Program costs upon receipt of invoices, with sufficient supporting documentation as determined and/or approved by the Department, indicating that expenses have been paid, such invoices to be submitted electronically on a monthly basis, indicating that expenses have been paid, such invoices to be submitted electronically on a monthly basis, and received by the DEPARTMENT by the 25th of the following month. These invoices shall be submitted to the DEPARTMENT using the New Mexico State Transit Accounting and Ridership System (NMSTARS). All expenses must be actual rather than estimated and listed on the invoices as charged. Rounding up or down, other than the total, is not permitted due to the possibility of audit exemptions Only those expenses or percentage thereof, properly documented and deemed eligible, shall be reimbursed under the Program. On each monthly invoice, the SUB-GRANTEE shall submit complete and accurate ridership numbers documenting the amount of service provided. The DEPARTMENT reserves the right to withhold payment of monthly invoices that are incorrect and/or incomplete; and,

  The SUBGRANTEE shall provide the DEPARTMENT with evidence of payments made by the sub-grantee pursuant to the AGREEMENT. Reimbursement is conditioned upon receipts by the DEPARTMENT of Federal Funds designated for said purpose. In no event shall the total amount reimbursed by the Department exceed the Federal share approved for the Program."

Effects

- NCRTD in non-compliance with MOA invoicing time requirements; and,
- Increased potential for reimbursements being delayed.

Cause

NCRTD management failed to place the importance necessary towards ensuring monthly invoices are submitted in the timely manner required by the MOA's.

Recommendation

We recommend the Transit and Rail Division remind NCRTD of their contractual obligation to ensure monthly invoices are submitted in accordance with the MOA's.

Response

NMDOT Transit & Rail Division – Since the start of Federal FY 2012 in October 2011 through April 2013, 13 of 19 invoices have been received prior to the 25th of the month. The Division will continue to encourage subgrantees to get their invoices submitted in a timely manner.

Finding No. 5 – Unsubstantiated Payroll

Condition

During our review of the charges to payroll expenses billed to NMDOT during FY's 08-11, we found the following:

- Leave slips signed by employees were not available for actual labor and overtime worked, vacation leave, and sick leave;
- Several time sheets were not signed by the employees but were approved by supervisors;
- Employees were paid overtime during weeks they claimed annual and/or sick leave;

- Employee overtime authorization forms were not available during audit;
- Paperwork for workmen's compensation claimed was not available. An employee claimed time off on time sheets to attend physical therapy for a work related injury. The employee also received overtime pay when the physical therapy appointments went beyond the end of the work day; and,
- Annual and Sick Leave accrual rates for several employees were above the maximum rate allowable.

Criteria

- 2 CFR Part 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87) Appendix B to Part 225- Selected Items of Cost

  8. Compensation for personal services.

  General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this and other appendices under 2 CFR Part 225, and that the total compensation for individual employees:

  (1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied for both Federal and non-Federal activities;
  (2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and
  (3) Is determined and supported as provided in subsection h...
  (h.) Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation. (1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official (s) of the governmental unit. (2) No further documentation is required for the salaries and wages of employees who work in single indirect cost activity. (3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee... (4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation...Such documentary support will be required where employees work on: (a) More than one Federal award...(d) Two or more indirect activities which are allocated using different allocation bases. (5) Personnel activity reports or equivalent documentation must meet the following standards: (a) They must reflect an after-the-fact distribution of the actual activity of each employee. (b) They must account for the total activity, for which each employee is compensated.

- 49 CFR Part 18.20 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

  (a) (2) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its sub-grantees and cost-type contractors, must be sufficient to permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statues.

  (2) Accounting records. Grantees and sub-grantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or sub-grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. (b) (6) Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and sub-grant award documents, etc.,

- FTA C 5010.1D Chapter II Circular Overview 11/1/2008

  3. Responsibilities of Grant Management. Grantees are responsible for the day-to-day management of their Federal grants and of grant supported activities. FTA monitors grants and federally funded projects to confirm that grantees establish and follow procedures that comply with Federal requirements.

  a. Grantee's Role. A grantee must monitor grant supported activities to ensure compliance with applicable Federal requirements. This includes the administration and management of the grant in compliance with the Federal regulations, Grant Agreement and applicable FTA circulars. A grantee is also responsible for funds that "pass through" to a sub recipient.

- FTA C 5010.1D Chapter VI Financial Management 11/1/2008

  1. General. Financial management is one of the most important practices in the management of Federal Funds. (2) Internal Controls. (b)...Grantees and sub-grantees are responsible for establishing and maintaining adequate internal controls over all their functions that affect implementation of a grant. For proper management of grants, these controls must be used by each grantee in all its operating, accounting, financial, and administrative systems. To ensure proper accountability for grant funds, internal controls must be integrated with the management systems used by the grantee to regulate and guide its operations...(3) Financial Management Systems...(b) Entities Other than a State: (2) Accounting Records. Grantees and sub grantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities...(b) Allowable Costs...To be allowable under a grant program, costs must meet the following general criteria...(9) Be adequately documented...

- New Mexico State Personnel Administration, Chapter 7 Part 7 Absence and Leave rates:

  1.7.7.8 Annual Leave (A) (5) 6.15 hours per pay period if fifteen years or more of cumulative employment. (E) A maximum of 240 hours of annual leave shall be carried forward after the last pay period beginning in December. (G) Employees separating from the classified service, except by a reduction in force, shall be paid for accrued annual leave, as of the date of separation, up to a maximum of 240 hours at their current hourly rate. Employees separating from the classified service as the result of a reduction in force shall be paid for all accrued annual leave, as of the date of separation, at their current hourly rate.

  1.7.7.10 Sick Leave: (A) Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay, shall accrue sick leave at the rate of 3.69 hours per pay period.

- North Central Regional Transit District Personnel Rules and Regulations Adopted 12-14-2007

  4.8 Requesting Leaves of Absence. A. All requests for leaves of absence, with or without pay, shall be made to the immediate supervisor for approval on forms prescribed by the Executive Director. B. All requests for leave shall be submitted in advance of the beginning date of the leave, (except request for unanticipated sick leave which shall be submitted for approval at the earliest possible time), and the duration and kind of leaves shall be recorded on the payroll. C. Paid leaves of absence are subject to the type of accrued leave balance an employee has and the scheduling of leave is subject to the control of the Department Management; and,

  4.9 Annual Leave A 2. Beginning the first year of employment, annual leave will be accrued by full-time regular employees at the rate of 3.077 hours per pay period (10 days per year) until the employee has been with NCRTD for five (5) years. 3. Beginning the fifth year of employment, full-time regular employees will accrue annual leave at the rate of 4.62 hours per pay period (15 days per year). 4. Beginning the tenth year of employment, full-time regular employees will accrue annual leave at the rate of 6.15 hours per pay period worked (20 days per year).

4.12 Accrual Rates for Sick Leave.

6. Sick leave shall be taken for the actual number of hours absent from the office, and in increments of not less than one hour. All sick leave must be accounted for by reporting to the Executive Director upon returning to work...The Chair of the NCRTD Board must approve all sick leave for the Executive Director.

Effects

- Inability to reconcile, cross-reference and verify labor hours invoiced;
- Possible over/under payment of labor costs and related employment taxes;
- NCRTD in non-compliance with Federal cost principles;
- NCRTD in non-compliance with MOA audit requirements;
- NCRTD in non-compliance with their own rules and regulations;
- Inadequate and unreliable audit trail; and
- Potential for loss of funding.

Cause

NCRTD failed to place the importance necessary towards ensuring that controls over payroll are in place to ensure compliance with applicable laws, rules, and regulations.

Recommendations

- We recommend NCRTD establish the organizational and operational controls specific to payroll that are necessary in order to ensure compliance; and,
- We recommend NMDOT Transit and Rail Division increase their level of oversight over NCRTD's payroll reimbursement process.

Response

NMDOT Transit and Rail Division – No response to Finding #5 from NMDOT Transit and Rail Division.

Finding No. 6 – Executive Director's Employment Agreement

Condition

During our review of the employment agreement entered into between NCRTD and their Executive Director dated September 2, 2011, we found the following:

- NCRTD failed to obtain NMDOT's written approval prior to executing the employment agreement; and,
- The term of the employment agreement is for an indefinite term.

Criteria

- In accordance with FY MOA's entered into by and between NMDOT and NCRTD, Subcontracts:

  "The sub grantee shall not assign any portion of the work to be performed under this agreement, or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this agreement without the prior written approval of the Department."

- GAO Principles of Federal Appropriations Law Third Edition Volume I Chapter 5 Availability of Appropriations: Time; A (1) Introduction:

The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

(2) Types of Appropriations:

No part of any appropriation contained in this Act shall remain available for obligations beyond the current fiscal year unless expressly so provided herein...the availability of an appropriation to incur a new obligation may not be extended beyond the fiscal year, for which it is made absent express indication in the appropriation act itself; and,

A limitation item included in an appropriation (for example, a lump-sum appropriation with a proviso that not to exceed a specified sum shall be available for a particular object) is subject to the same fiscal year limitation attaching to the parent appropriation unless the limitation is specifically exempted from it in the appropriation act.

Effects

- NCRTD in non-compliance with MOA sub-grantee approval requirements;
- NCRTD in non-compliance with GAO Law (Red Book) regarding time limitations for expending federal appropriations;
- Transit and Rail Division reimbursing NCRTD for unapproved Executive Director's salary and benefits package; and,
- Potential for loss of funding for NCRTD.

Causes

- NCRTD failed to obtain the required written approval from the Transit and Rail Division prior to entering into the Executive Director's employment agreement; and,
- NCRTD is unaware that indefinite period employment contracts are unallowable.

Recommendations

- The Transit and Rail Division remind NCRTD of their contractual obligation to obtain written approval prior to initiating any agreement with the Executive Director or any other third party; and,
- The Transit and Rail Division consult with FTA representatives to determine appropriate course of action.

Response

NMDOT Transit and Rail Division – At the time, Division staff regarded this issue as an NCRTD Board-directed personnel matter. The Division will direct NCRTD to formally request NMDOT's approval as part of the Third Party Contracting requirements in our Memorandum of Agreement for FTA funds.

Part II - Concerns

Concern No. 1 - NCRTD's Supremacy of Establishing Documents

During our audit we found NCRTD's By- Laws list the incorrect order of hierarchy regarding supremacy of documents. Therefore, we recommend NCRTD as a sub-recipient of federal funds, review and change the Order of Hierarchy as follows:

1. Code of Federal Regulations;

2. New Mexico State Statutes;
3. NCRTD Contracts; then
4. NCRTD By-Laws.

Response

NMDOT Transit and Rail Division – No response to Concern #1 from NMDOT Transit and Rail Division.

Concern No. 2 – NCRTD's Procurement Policies

It was noted during the course of reviewing policies and procedures that NCRTD's internal procurement policies state that the District is exempt from all provisions from the State of New Mexico Procurement Code.

We recommend NMDOT Transit and Rail Division remind NCRTD of their contractual obligation to comply with all State Procurement laws, rules, and regulations.

Response

NMDOT Transit and Rail Division – No response to Concern #2 from NMDOT Transit and Rail Division.

Concern No 3 – Inoperable NMSTARS

It came to the auditor's attention that the New Mexico State Transit Accounting and Ridership System (NMSTARS), which is a web-based program developed to facilitate sub-recipient monthly reporting requirements has been inoperable since May 2012.

It is our recommendation, in order to maintain uniform reporting for all sub-recipients that the Transit Bureau consult with NMDOT's Information Technology Bureau to obtain resolution.

Response

NMDOT Transit and Rail Division – The Division has had numerous discussions with NMDOT's Information Technology (IT) Bureau, NMDOT Legal Counsel, NMDOT OIG and NMDOT Executive Management since the inoperability of NMSTARS in May 2012. This was a technical problem that was not caused by the Division and has been out of the Division's control. The Division has in the past months relied on other Divisions within NMDOT that are responsible for IT issues to redeploy NMSTARS with no success. The Division has been in the process of developing technical specifications for a procurement seeking a contractor to develop a new system to replace NMSTARS. Since the shutdown on NMSTARS, uniformity of reporting is being maintained by all rural transit systems in New Mexico with a spreadsheet reporting system that is in compliance with FTA regulations.

Audit Conclusion

Based upon the extent of the findings noted within this audit report, it is our strong recommendation that the NMDOT Transit Bureau increase their level of oversight over NCRTD's activities as defined within OMB Circular A-133 Pass through Entity Responsibilities:

- Advise sub-recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity;
- Monitor the activities of sub-recipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved; and
- Ensure that sub-recipients expending $500,000 or more in Federal awards during the sub-recipients fiscal years have met the audit requirements of this part for that fiscal year.

Response

NMDOT Transit and Rail Division General Comments:

Since this audit generally covers the period of FY 2008 – 2011, it is helpful to note the change in NCRTD staff leadership that occurred starting in FY 2012. Due to numerous site visits and technical guidance provided by NMDOT Transit and Rail Division staff in FY 2012, a site visit from Federal Transit Administration (FTA) Region VI staff as part of a New Mexico State Management Review in July 2012 (no findings), and an FTA Financial Management Oversight Review final report (August 1, 2012) and NCRTD response (dated September 17, 2012), and most importantly, NCRTD staff follow through on NMDOT and FTA guidance, vast improvements have been made to processes, procedures, and practices of the NCRTD. This Audit provides a snapshot of NCRTD staff leadership and business practices prior to FY 2012 when NCRTD compliance with applicable regulations was resistant to fundamental change due to the political support the previous NCRTD Executive Staff had in the State Legislature and the city and the county governing bodies in the NCRTD region.

xc: Tom Church, Cabinet Secretary
Kathy Bender, Deputy Secretary, Transportation Programs & Infrastructure
David Harris, Transit Bureau Chief
Anthony Lujan, Inspector General
Yvonne M. Gonzales, Internal Audit Supervisor
Heriberto Chavarria, Program Management Specialist, FTA
Abel Ayala, Program Management Specialist, FTA
J. Don Martinez, Division Administrator, FHWA
Hector Balderas, State Auditor
Current Audit File

NCRTD Response to NMDOT Inspector General Audit 6/11/13

1. NCRTD in Non-Compliance with Records Management Requirements

Response:

a. Financial Record

1. Response: NCRTD acknowledges that during the audit period it was in the process of relocating from its offices from Santa Fe, Espanola and Taos which occurred in late July,2012. However, the NMDOT IG notified the District in October 2011 of its intent to undertake an audit and had ample time prior to the move to request and obtain documents. The Audit commenced field work on approximately December 2011. The District's move did not occur until approximately eight (8) months after the commencement of the audit. This was more than ample time for the IG to have completed its field work and the request for documents during the middle of this planned relocation of District operations is not grounds for a finding. The IG did not undertake any field work or inquiries approximately, between February and June of 2012. Most requests for documents were done through email or fax after the June 2012 time period and on a sporadic basis thereafter. The District should not be held accountable for inability to produce records during the middle of a major relocation when the IG had full knowledge of this move and ample opportunity to request and obtain the records prior to the move.
2. The transition from QuickBooks to MIP Sage software took place in 2009. Therefore any finding regarding difficulties due to the differing software systems should be limited to the part of the fiscal year that was being audited prior to this date.
   The District is unable to respond to the finding that source documents may have lacked explanations or purposes for expenses without more specific information on which documents from the prior administration were being requested.

b. Incorrect Audit Information.

1. The IG does not provide any reference to the time period or specify what information they were seeking. District staff attempted to satisfy all information requests.

c. Loss of Audit Liaison.
   1. The District's financial manager left in June 2012. However, she continued to work for the district on a contractual basis and was available to the IG up until April, 2013. The District disagrees with this finding that sufficient technical staff was not available to address and facilitate audit requests in a timely manner. It appears that some of the audit findings are the result of staffing vacancies at the IG itself during the protracted course of the audit. The District should not be the subject of findings due to internal staffing issues of the IG.

d. Multiple Ongoing Audits.
   1. In November 15, 2011 the IG was informed of multiple audits that were in process or planned. The District made it known to the IG that it was concerned that its audit could be replicative of the contemporaneous FTA FMO audit. The District had also indicated to the IG that it was in the process of completing three other audits and field work on a fourth. The District does accept responsibility for the past administration not completing its audits in timely fashion but the finding should acknowledge that IG chose to proceed at this time with full knowledge that the additional audit would be impacted by the duplication of efforts.

Finding No. 2 NCRTD in Non-Compliance with Single Audit Act Requirements

Response: The FTA FMO review (completed in August, 2012) made this finding only in relation to FY 11. The District's external auditor believed that the Audit report had to be filed within 60 days of the audit being released by the New Mexico State Auditor and acted accordingly. The District's external auditor has now corrected their filing practice to align with OMB Circular A-133 requirements.

For the Fiscal Year 2012 Audit, the District's external auditor submitted the audit on time and in accordance with OMB Circular A-133.

Finding No. 3 NCRTD in Non-Compliance with Operator Training Requirements

Response: The District's current administration has been utilizing the NMDOT Driver New Hire Training Program. Prior administration practices, to the extent they failed to properly document or implement training programs have been corrected. In addition, employees receive training in many other critical areas. All training administered to drivers are documented. All employee training files are current and up to date.

Finding No. 4 Late Monthly Invoices

Response: The current administration and Finance Manager have placed emphasis upon ensuring that invoices are submitted on or before the 25th of every month for reimbursement.

Finding No. 5 Unsubstantiated Payroll

Response: The current administration of the District and Finance Manager have implemented internal controls and policy and procedures to conduct internal audits for the purpose of identifying any missing signatures from both employees/supervisors and managers on overtime, leave annual or sick and time sheets.

In respect to the workmen's compensation claim, the District is unable to respond without more specific information. It is not clear whether this issue was raised with District staff during the audit in order to clarify the facts.

Annual and sick leave accrual rates for District employees were not above the maximum rate allowable under the Districts Personnel Rules. A number of District employees were acquired from the City of Espanola and Rio Arriba County transit systems when the District consolidated those systems. As a result the consolidation agreements conveying those employees required that they also retain their leave accruals for sick and annual leave from their prior employers. The consolidation agreements that required different accrual rates for sick and annual leave are and have been available at all times. Legal Counsel for the District has reviewed the pertinent state statutes and informed the District that it is authorized to implement its own Personnel Rules including but not limited to varying from the state of New Mexico's accrual policies. Counsel for the District may be reached at (505) 988-4575 x106 to discuss this or any other legal issues raised in the audit.

The District has internal controls, policies and procedures for review of compliance with personnel rules and regulations.

The District is a "political subdivision of the state created pursuant to the Regional Transit District Act." NMSA 1978, Section 73-25-3 (F). The NCRTD is not an executive agency. A "political subdivision of the state" falls under the procurement code definition of a Local Public Body within the meaning of NMSA 1978, Section 13-1-67. NMSA 1978, Section 13-1-90 states that "'State Agency' includes the purchasing division of the general services department and the state purchasing agent **but does not include local public bodies**." In essence the District is the equivalent of an autonomous local public body, having its own tax revenue, an independent Board and separate accounts, revenues, and liabilities.

The District has duly adopted its own Personnel Rules and Regulations and is not bound or regulated by State of New Mexico Personnel Administrative Rules, procedures or regulations. Therefore, the New Mexico Personnel Administration leave rates are immaterial in assessing the District's compliance with personnel rules and regulations.

Finding No. 6 – Executive Director's Employment Agreement

It is not clear from the limited information provided by the IG what the concern is with the contract. The District has exclusive authority to hire its executive director under NMSA 1978, Section 73-25-5 (G) (6) and 73-25-6 (a) (3). (See Also, Section 13.01 of the NCRTD Board of Director Bylaws specifically

prescribing the role and relationship of the Executive Director to the Board.) The Executive Director is hired directly by the Board of the District and the State of New Mexico has no authority to contravene or approve the hiring or the contract. The State of New Mexico is authorized to participate in the Board and therefore to have a role in the contracting of the Executive Director under NMSA 1978, Section 73-25-4 (D) which provides in pertinent part that "[u]pon approval of the governor, the state may join in the contract creating a district. The number of directors of the board to which the state is entitled shall be established in the contract, but in no case shall the state be entitled to less than one director." Notwithstanding this provision of law the State of New Mexico has elected not to have a voting Board member and has elected instead to attend and monitor Board meetings.

The term and termination provisions of the Executive Director's contract are not governed by state or federal law. They are discretionary matters decided directly by the Board. As with most high level executive offices the contract provides the Board with the right to terminate the Executive Director as an "exempt employee" and without the need for following disciplinary procedures that apply to "classified" employees. The Executive Director serves at the pleasure of the Board and this is both typical and provident under general principles of law because it provides the Board (which consists of a changing body of elected officials) with the option of terminating an Executive Director at any time if the majority of the Board wishes to do so. As with all contracts under New Mexico law the actual term is fundamentally limited by the Board's annual appropriations and therefore has a maximum effective term of one year.

Legal counsel for the District has reviewed this matter and concluded that based upon the limited information provided to the District, the audit finding is incorrect.

Concerns:

Concern No. 1 – NCRTD's Supremacy of Establishing Documents

As previously stated the NCRTD is fundamentally a "political subdivision of the state." NMSA 1978, Section 73-25-3 (F). As such it is predominately subject to and bound by the Constitution and laws of the State of New Mexico. It is created pursuant to the Regional Transit District Act, NMSA 1978, Section 73-25-1 et seq. All of its authority derives from that statute which in turn derives from the authority vested in the New Mexico State Legislature under the Constitution of the State of New Mexico. The District has no power or authority beyond that conveyed to it by the State and therefore is ultimately limited by the State Constitution and laws.

Federal laws are primarily implicated by the various grant agreements between the State of New Mexico and the United States or between the NCRTD itself and the United States. Although various federal laws are integrated by reference in those contracts the vast majority of federal law does not apply to the District and has no bearing on the District.

The New Mexico State Constitution provides specific constraints and requirements upon public entities that apply to the NCRTD such as anti-donation requirements, the State Constitution's due process requirements (which are more stringent than comparable federal requirements) and restriction on expenditures and indebtedness that are not contained in the U.S. Constitution.

The U.S. Constitution, on the other hand, only serves as the supreme law of the land on federalized issues (for example under the commerce clause) or other provisions where the federal law has preempted the general authority expressly reserved to states under the U.S. Constitution.

It is not clear why the audit seeks to impose findings on general principles of law such as the relationships between state and federal government. However, legal counsel for the District has reviewed this matter and provided this response. If the IG wishes to obtain a fuller opinion on the matter the IG's legal counsel can contact the District's legal counsel at (505) 988-4575 x106.

Concern No. 2 – NCRTD's Procurement Policies

1. Response: New Mexico State Statutes allow governmental entities to adopt their own procurement rules and regulations. Specific authority for Transit Districts is contained in NMSA 1978, Section 73-25-5. Under state law the NCRTD is deemed a "political subdivision of the state" and therefore falls under the procurement code definition of a Local Public Body within the meaning of NMSA 1978, Section 13-1-67. NMSA 1978, Section 13-1-90 states that " 'State Agency' includes the purchasing division of the general services department and the state purchasing agent **but does not include local public bodies**." Therefore, the District is not bound by the State of New Mexico Procurement Code. The District has its own procurement code which is available for inspection.